IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL No.2395 of 2003

A.K. Gnanasankar .. Appellant/Petitioner

vs.

Joint II Sub Registrar
Cuddalore 2. .. Respondent/Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court Dated 4.4.2003 made in W.P.No.6722 of 2000 dated 04.04.2003. Writ Petition filed under Article 226 of the Constitution ofr India praying for the issuance of a Writ of Mandamus directing the respondent to register the certified copy of final decree in O.S.No. 538/1995 on the file of the Subordinate Judge, Cuddalore.

For appellant : Mr. R. Gururaj

For respondent : Mr. P. Subramanian
Government Advocate

..

JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

The above writ appeal is directed against the order of the learned Single Judge dated 4.4.2003 made in W.P.No.6722 of 2000 in and by which the learned Judge, after finding that there is no merit in the writ petition seeking a writ of Mandamus, dismissed the writ petition.

2. Heard learned counsel appearing for the appellant as well as learned Government Advocate for the respondents.

3. For convenience, we shall refer the parties as arrayed in the writ petition.

4. According to the petitioner, himself, his father and his brother constituted a joint Hindu family. The brother of the petitioner, by name, Ramalingam filed O.S.No.538 of 1995 on the file of Subordinate Judge's Court, Cuddalore against the petitioner and his father for partition of his 1/3rd share in the properties of the family on 26.9.1995. According to the petitioner, he is entitled to 1/3rd share and his father is entitled to 1/3rd share. Thereafter, they

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

entered into a compromise and the compromise was recorded by order dated 8.12.1995 in I.A.No.1269 of 1995. They had to pay stamps so that a final decree could be passed and engrossed on stamp papers. The petitioner's brother did not pay for the required stamp papers and hence, the office did not prepare the final decree. Since the petitioner was in need of final decree, he produced the stamp papers worth Rs.51,550/- and prayed for passing of final decree. For that, the petitioner also filed I.A.No.119 of 2000 seeking appropriate relief. On 16.2.2000, the Court, after hearing learned counsel for both the parties, passed a final decree. The petitioner applied for a copy of the same on 2.3.2000 and copy was also delivered to him on 8.3.2000. The limitation of four months prescribed for presenting documents does not apply to decree. Decree is a permanent record of Court to register and hence, no limitation can be prescribed. The case of the petitioner is that after getting decree copy, he approached the respondent, who, however, refused to register the same. On 23.3.2000, the petitioner issued a notice to the respondent calling upon him to register the decree copy on 29.3.2000. Since the respondent failed to comply with the same, having no other remedy, the petitioner filed the writ petition before this Court seeking a direction to the respondent to register certified copy of final decree in O.S.No.538 of 1995 on the file of Subordinate Judge's Court, Cuddalore.

5. The respondent, Joint Sub-Registrar-II, Cuddalore-2, filed a counter affidavit explaining his stand.

6. By order dated 4.4.2003, the learned Judge, after finding that section 23 of the Registration Act, 1908 has not been complied with, dismissed the writ petition. Hence, the present appeal.

7. Learned counsel appearing for the appellant/petitioner brought to our notice the reason for not depositing the required non-judicial stamp papers for preparing the final decree. He also brought to our notice the petition filed by the petitioner who is the first defendant in the above said suit. In I.A.No.119 of 2000 the petitioner, after setting out various reasons, prayed the Court for extension of time. The said petition was filed under section 148 read with 151 and 94(e), Code of Civil Procedure. It is also brought to our notice that after hearing both the sides, the learned Subordinate Judge, by order dated 29.2.2000 extended the time for depositing stamp papers. The affidavit filed in support of the said petition and the order passed by the learned Judge are available at page Nos.9 and 10 of the typed-set of papers filed by the appellant/petitioner. It is clear from the above order that though the parties to the compromise had not deposited the required stamps, on the basis of the reasons stated in the affidavit filed in support of the petition, I.A.No.119 of 2000, it is clear, the Subordinate Court extended the time. It is not in dispute that pursuant to the same, the parties including the appellant/ petitioner deposited the required stamps and after getting the certified copy of the final decree duly engrossed on the stamp papers, the petitioner presented before the respondent within the prescribed time.

8. It is useful to refer section 23 of the Registration Act which speaks about the time for presenting documents and reads as follows:

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

"23. Time for presenting documents.-

Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final. "

The above provision makes it clear that all documents except will are to be presented before a proper officer and the same shall be presented within four months from the date of its execution. If we consider the date on which the final decree was passed by the Subordinate Court, as rightly pointed out by the learned Government Advocate, the document presented before the respondent is hopelessly barred by time. However, the Proviso appended to section 23 makes it clear that a copy of decree or order may be presented within four months from the day on which it was made or whether it is appealable within four months from the date on which it becomes final. It is not in dispute that unless the parties to the proceedings deposit the required stamps, final decree cannot be drafted. Taking into consideration the difficulties expressed, ultimately the court concerned accepted the case of the appellant/petitioner/first defendant and extended the time for depositing the required stamps. In view of the said order, which we have already adverted to, we are of the view that the appellant/petitioner has satisfied the condition prescribed in section 23 of the Registration Act and we are unable to accept the contrary conclusion arrived at by the learned Judge. When there is no dispute that the certified copy of the final decree will not be issued unless it is engrossed on the required stamp papers and in view of the fact that after getting certified copy of the decree duly engrossed on the stamps, the petitioner presented the same before the respondent within the period prescribed in section 23 of the Registration Act, we are of the view that the respondent ought to have registered the document, if the same is otherwise in order.

In these circumstances, the order of the learned judge dated 4.4.2003 is set aside and direction is issued to the respondent to register the certified copy of the final decree in O.S.No.538 of 1995 on the file of Subordinate Judge's Court, Cuddalore within a period of four weeks from the date of receipt of copy of this order. The writ appeal is allowed. No costs.

kh

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1.The Joint II Sub Registrar
Cuddalore 2.

+ One cc to Mr. R. Guruaj, Advocate sR 14099

+ One cc to Govt Pleader SR 18418

RS (co)

sg 2/4/07

Judgement in
W.A.No.2395 of 2003
Dated:23.03.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/